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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 647 Misc.

GAVOER MANHAT,

Petitioner,

v.

UNITED STATES OF AMERICA and
PROJECT CONSTRUCTION CORPORATION,

Respondents,

—and—

PROJECT CONSTRUCTION CORPORATION and
STUART MARINE PAINTING CORPORATION,

Impleaded Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Petitioner Seeks Only to Review Questions of Fact

The District Court in its original findings and conclusions, 113 F. Supp. 595, found the occurrence did not result from any negligence on the part of the respondents, United States of America and Project Construction Corporation. No cause was ever given for the fall of the lifeboat. Its fall was never ex-

plained. The District Court found that the only probable inference explaining its fall was that petitioner, or one of his co-workers, moved the releasing handle from the secure position to the release position.

> "These facts, coupled with failure of libelants to suggest any cause for the fall of the lifeboat, point to the possible inference that the boat fell because the releasing gear was removed by someone from the secured position in the keeper to one of complete release."

The District Court in its original findings and opinion also found that the doctrine of *res ipsa loquitur* could not be applied as the boat was not in the exclusive control of respondents at the time of the accident.

The District Court in its supplemental opinion, 121 F. Supp. 196, made the supplementary finding of fact that:

> "The lifeboat and its equipment at the time of entry by libelants were in proper order, free from defect, not shown to be lacking a toggle or keeper pin in the releasing gear and in all respects seaworthy."

The Court of Appeals, F. (2d) (not yet reported), held:

That the "conclusion" of the District Court that the "probable explanation" of the accident was that petitioner or one of his two co-workers moved the releasing handle from the secure to the release position was "amply supported by the evidence".

That the District Court "properly refused to apply the doctrine of *res ipsa loquitur*".

That the District Court did not "err" in refusing to infer from the facts of the occurrence that the releasing gear was in an unseaworthy condition.

That the evidence lends substantial support to the finding of the District Court "that the lifeboat and its equipment were in proper order, free from defect and in all respects seaworthy".

That it was "clear, beyond cavil," that petitioner and his two co-workers "were familiar with the operation of the releasing mechanism" and "were given ample warning of the danger inherent in moving the handle".

That the respondents were not under the duty to "safeguard absolutely" against the possibility that they would remove the toggle pin and move the handle from secure to release position.

That the District Court followed all the evidence respecting custom or practice to permit work in lifeboats only when they were cradled or lashed "with scrupulous care and attention" and its "conclusion that no such custom or practice existed * * * is amply supported by the evidence".

That the duty of respondents to furnish a seaworthy vessel does not "require the best possible equipment" or "impose an insurer's liability" on them.

That the evidence reasonably showed the releasing gear in this boat "furnished ample protection against the falling of a lifeboat".

That the District Court's "finding of seaworthiness seems to us to be unassailable."

That "in the light of the record" the "probative value" of the prior contracts and excerpts from Coast Guard Regulations appearing under the heading "Suggestions for Seamen", "would have been negligible".

That "it is clear the trial judge would have arrived at the same conclusion in any event."

To give consideration to any of the questions petitioner presents for review it would be necessary first for this Court to review the evidence and reverse the finding of seaworthiness or the finding of no negligence or both, or to differ with the findings below that the doctrine of *res ipsa loquitur* did not apply here, that the respondents did not have an insurer's liability or that the probative value of the prior contracts and excerpts from Coast Guard Regulations would have been negligible.

This Court will not review questions of fact and most certainly not where the findings and conclusions of the District Court are clearly and substantially supported by the evidence.

McAllister v. *United States*, 348 U. S. 19;
United States v. *Oregon State Medical Society*, 343 U. S. 326;
National Labor Relations Board v. *Pittsburgh Steamship Co.*, 340 U. S. 498;
United States v. *Yellow Cab Co.*, 338 U. S. 338.

Respectfully submitted,

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Project Construction Corporation.

Dated, June 2, 1955.